

(b) Whenever the Appeals Council reviews a hearing decision under §§ 404.967 or 404.969, 410.662, 416.1467, or 416.1469 of this chapter, or 42 CFR 405.724 or 417.261 or 473.46 and the claimant does not appear personally or through representation before the Council to present oral argument, such review will be conducted by a panel of not less than two members of the Council designated in the manner prescribed by the Chairman or Deputy Chairman of the Council. In the event of disagreement between a panel composed of only two members, the Chairman or Deputy Chairman, or his delegate, who must be a member of the Council, shall participate as a third member of the panel. When the claimant appears in person or through representation before the Council in the location designated by the Council, the review will be conducted by a panel of not less than three members of the Council designated in the manner prescribed by the Chairman or Deputy Chairman. Concurrence of a majority of a panel shall constitute the decision of the Appeals Council unless the case is considered as provided under paragraph (e) of this section.

(c) The denial of a request for review of a hearing decision concerning a determination under § 422.203(a)(1) shall be by such appeals officer or appeals officers or by such member or members of the Appeals Council as may be designated in the manner prescribed by the Chair or Deputy Chair. The denial of a request for review of a hearing dismissal, the dismissal of a request for review, the denial of a request for review of a hearing decision whenever such hearing decision after such denial would not be subject to judicial review as explained in § 422.210(a), or the refusal of a request to reopen a hearing or Appeals Council decision concerning a determination under § 422.203(a)(1) shall be by such member or members of the Appeals Council as may be designated in the manner prescribed by the Chair or Deputy Chair.

(d) A review or a denial of review of a hearing decision or a dismissal of a request for review with respect to requests by parties under 42 CFR 498.82 or 1001.128 in accordance with § 498.83 will be conducted by a panel of at least two

members of the Appeals Council designated by the Chairman or Deputy Chairman and one person from the U.S. Public Health Service designated by the Surgeon General, Public Health Service, Department of Health and Human Services, or his delegate. This person shall serve on an ad hoc basis and shall be considered for this purpose as a member of the Appeals Council. Concurrence of a majority of the panel shall constitute the decision of the Appeals Council unless the case is considered as provided under paragraph (e) of this section.

(e) On call of the Chairman, the Appeals Council may meet en banc or a representative body of Appeals Council members may be convened to consider any case arising under paragraph (b), (c), or (d) of this section. Such representative body shall be comprised of a panel of not less than five members designated by the Chairman as deemed appropriate for the matter to be considered, including a person from the U.S. Public Health Service in a matter under paragraph (d) of this section. The Chairman or Deputy Chairman shall preside, or in his absence, the Chairman shall designate a member of the Appeals Council to preside. A majority vote of the designated panel, or of the members present and voting shall constitute the decision of the Appeals Council.

(f) The Chairman may designate an administrative law judge to serve as a member of the Appeals Council for temporary assignments. An administrative law judge shall not be designated to serve as a member on any panel where such panel is conducting review on a case in which such individual has been previously involved.

[41 FR 53792, Dec. 9, 1976, as amended at 44 FR 34942, June 18, 1979; 54 FR 4268, Jan. 30, 1989; 60 FR 7120, Feb. 7, 1995]

§ 422.210 Judicial review.

(a) *General.* A claimant may obtain judicial review of a decision by an administrative law judge if the Appeals Council has denied the claimant's request for review, or of a decision by the Appeals Council when that is the final decision of the Secretary. A claimant may also obtain judicial review of a reconsidered determination, or of a

decision of an administrative law judge, where, under the expedited appeals procedure, further administrative review is waived by agreement under §§ 404.926, 410.629d, or 416.1426 of this chapter or 42 CFR 405.718a–e as appropriate. For judicial review as to the amount of benefits under Part A or Part B of title XVIII of the Social Security Act, or of health services to be provided by a health maintenance organization without additional cost, the amount in controversy must be \$1,000 or more as provided under section 1869(b) and section 1876(c)(5)(B) of the Act. For judicial review of a determination by a PRO, the amount in controversy must be \$2,000 or more. An institution or agency may obtain judicial review of a decision by the Appeals Council that it is not a provider of services, or of a decision by the Appeals Council terminating an agreement entered into by the institution or agency with the Secretary (see section 1866(b)(2) of the Act). The Social Security Act does not provide for a right to judicial review of a final decision of the Secretary regarding the status of an entity which is not a “provider of services”, such as an independent laboratory. Providers of services or other persons may seek judicial review of a final administrative determination made pursuant to section 1128(b)(6) of the Act. There are no amount-in-controversy limitations on these rights of appeal.

(b) *Court in which to institute civil action.* Any civil action described in paragraph (a) of this section must be instituted in the district court of the United States for the judicial district in which the claimant resides or where such individual or institution or agency has his principal place of business. If the individual does not reside within any such judicial district, or if such individual or institution or agency does not have his principal place of business within any such judicial district, the civil action must be instituted in the District Court of the United States for the District of Columbia.

(c) *Time for instituting civil action.* Any civil action described in paragraph (a) of this section must be instituted within 60 days after the Appeals Council’s notice of denial of request for review of

the administrative law judge’s decision or notice of the decision by the Appeals Council is received by the individual, institution, or agency, except that this time may be extended by the Appeals Council upon a showing of good cause. For purposes of this section, the date of receipt of notice of denial of request for review of the presiding officer’s decision or notice of the decision by the Appeals Council shall be presumed to be 5 days after the date of such notice, unless there is a reasonable showing to the contrary. Where pursuant to the expedited appeals procedures an agreement has been entered into under 42 CFR 405.718c, a civil action under section 205(g) of the Act must be commenced within 60 days from the date of the signing of such agreement by, or on behalf of, the Secretary, except where the time described in the first sentence of this paragraph (c) has been extended by the Secretary upon a showing of good cause. Where pursuant to the expedited appeals procedures an agreement has been entered into under §§ 404.926, 410.629d, or 416.1426 of this chapter, a civil action under section 205(g) of the Act must be commenced within 60 days after the date the individual receives notice (a signed copy of the agreement will be mailed to the individual and will constitute notice) of the signing of such agreement by, or on behalf of, the Secretary, except where the time described in this paragraph (c) has been extended by the Secretary upon a showing of good cause.

(d) *Proper defendant.* Where any civil action described in paragraph (a) of this section is instituted, the person holding the Office of Secretary of Health and Human Services shall, in his official capacity, be the proper defendant. Any such civil action properly instituted shall survive notwithstanding any change of the person holding the Office of Secretary or any vacancy in such office. If the complaint is erroneously filed against the United States or against any agency, officer, or employee of the United States other than the Secretary, the plaintiff will be notified that he has named an incorrect defendant and will be granted 60 days from the date of receipt of such notice in which to commence the action

against the correct defendant, the Secretary.

[41 FR 53792, Dec. 9, 1976, as amended at 44 FR 34942, June 18, 1979; 49 FR 46370, Nov. 26, 1984; 49 FR 48036, Dec. 10, 1984; 54 FR 4268, Jan. 30, 1989]

Subpart D—[Reserved]

Subpart E—Availability of Information and Records to the Public

AUTHORITY: Secs. 205(a), 702(a)(5), and 1106 of the Social Security Act (42 U.S.C. 405(a), 902(a)(5), and 1306); 5 U.S.C. 552 and 552a; 8 U.S.C. 1360; 26 U.S.C. 6103; 30 U.S.C. 923(b).

§ 422.401 Scope and purpose.

The regulations in this subpart relate to the availability to the public, pursuant to 5 U.S.C. 552, of records of the Social Security Administration and its components. They set out what records are available and how they may be obtained. These regulations do not revoke, modify, or supersede the regulations of the Social Security Administration relating to disclosure of information published in part 401 of this chapter. Further, the regulations in this subpart supplement the regulations of the Department of Health, Education, and Welfare relating to availability of information pursuant to 5 U.S.C. 552, codified in 45 CFR 5.1 *et seq.*, and do not replace or restrict them.

[40 FR 27650, July 1, 1975]

§ 422.402 Record defined.

As used in this subpart, the term *record* has the same meaning as that provided in 45 CFR 5.5.

[40 FR 27650, July 1, 1975]

§ 422.406 Publication.

(a) *Methods of publication.* Materials required to be published pursuant to the provisions of 5 U.S.C. 552 (a)(1) and (a)(2) are published in one of the following ways:

(1) By publication in the FEDERAL REGISTER of Social Security Administration regulations, and by their subsequent inclusion in the Code of Federal Regulations;

(2) By publication in the FEDERAL REGISTER of appropriate general notices; and

(3) By other forms of publication, when incorporated by reference in the FEDERAL REGISTER with the approval of the Director of the Federal Register.

(4) By publication in the "Social Security Rulings" of indexes of precedential social security orders and opinions issued in the adjudication of claims, statements of policy and interpretations which have been adopted but have not been published in the FEDERAL REGISTER, and of administrative staff manuals and instructions to staff that affect a member of the public. The "Social Security Rulings" may be purchased through the Government Printing Office.

(b) *Publication of rulings.* Although not required pursuant to 5 U.S.C. 552 (a)(1) and (a)(2), the following rulings will be published in the FEDERAL REGISTER as well as by other forms of publication:

(1) Social Security Rulings are published in the FEDERAL REGISTER under the authority of the Commissioner of Social Security and are binding on all components of the Administration. These rulings represent precedent final opinions and orders and statements of policy and interpretations that have been adopted by the Administration.

(2) Social Security Acquiescence Rulings are published in the FEDERAL REGISTER under the authority of the Commissioner of Social Security and are binding on all components of the Administration, except with respect to claims subject to the relitigation procedures established in §§ 404.984 (c) and (d), 410.610c (c) and (d), and 416.1484 (c) and (d). For a description of Social Security Acquiescence Rulings, see §§ 404.984(b), 410.610c(b), and 416.1484(b) of this title.

(c) *Availability for inspection.* Those materials which are published in the FEDERAL REGISTER pursuant to 5 U.S.C. 552(a)(1) shall, to the extent practicable and to further assist the public, be made available for inspection at the places specified in § 422.428.

[33 FR 9606, July 2, 1968, as amended at 41 FR 50998, Nov. 19, 1976; 55 FR 1021, Jan. 11, 1990]